

The Small Business Guide to FAMLI



COLORADO

**Family and Medical Leave
Insurance Program (FAMLI)**

Department of Labor and Employment





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The Colorado Department of Labor and Employment (CDLE) and its Division of Family and Medical Leave Insurance (FAMLI) created this handbook as a public service to small businesses that want to understand their FAMLI obligations. It is designed to provide employers with an overview of their rights and responsibilities under Colorado's voter-approved Family and Medical Leave Insurance program. It is intended to be a source of general information only and does not carry the force of a legal opinion. FAMLI reserves the right to update the material and information as necessary. [The Colorado Paid Family and Medical Leave Insurance Act](#), and its rules and regulations remain the legal sources for information.

Contents

<u>Understanding FAMI</u>	<u>4</u>
What is FAMI?	4
How FAMI is Funded	4
Employer Responsibilities	5
• <i>Am I an employer?</i>	

<u>FAMI and Business Structure</u>	<u>6</u>
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<u>Counting Your Employees</u>	<u>7</u>
20 Calendar Workweeks	7
Remote and Nationwide Workers	9
Colorado Localization	10

<u>FAMI and Taxes</u>	<u>12</u>
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<u>Small Business FAQs</u>	<u>13</u>
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What is FAMLI?

The Family and Medical Leave Insurance (FAMLI) program will ensure most Colorado workers have access to paid leave in order to take care of themselves or their family during life circumstances that pull them away from their jobs — like growing their family or taking care of a loved one with a serious health condition or preparing for a military deployment. FAMLI is a social insurance program funded through premiums that are paid into a fund. Both employers and employees contribute a portion of the premium with employers paying half and employees paying half through simple payroll deductions. Employers have the option to pay the full share of the premium as an added benefit for their employees.

If you have even one employee in Colorado, FAMLI impacts you!








Remember, small businesses are not exempt from FAMLI. Nearly every Colorado employer is required to comply with the FAMLI Act's requirements by either participating in the state program or providing a private plan approved by the state.

The only employers that are not required to participate in the state plan or provide an equal or greater paid leave program are **local government employers** that have voted to opt-out and **federal employers**.

Self-employed workers and independent contractors have the option of voluntarily opting into the FAMLI program. Federal employees and some railroad workers are not covered under FAMLI. **Everyone else**, including domestic workers, clergy, nonprofit organizations and businesses with just one employee, will be required to comply with the premium payments.

How FAMLI is Funded

Premium Responsibilities Under Proposition 118

Employer Type	Employer Premium	Employee Premium	No Premium
9 or fewer employees			
10+ employees			
Participating self-employed			
Participating local government employee			
Nonparticipating local government			
Nonparticipating self-employed			
Employer with approved private plan			

Employer Responsibilities

All private employers must register and remit wage data and employee premiums to the FAML Division every quarter. Even if you have 9 or fewer employees and don't have to pay the employer's share of the premium, you are still responsible for sending the 0.45% employee share to the Division.

Many entrepreneurs aren't sure if they qualify as an employer, especially if they pay only themselves or a family member.

If you are a business owner, and only pay yourself as your sole employee, then you would be considered **self-employed** for FAML purposes, and your participation is voluntary. Once you hire your first employee, then you will be required to comply with all of the FAML rules and regulations and remit premiums on behalf of that one employee.

Under the FAML Act, an "employee" is any individual, including a migratory laborer, performing labor or services for the benefit of another, irrespective of whether the common law relationship of master and servant exists.

The FAML Act's definition of "employee" includes a two-prong exception. If a person is **both**

- Primarily free from control in the performance of their work
- Performing work is part of their independent profession or trade

then that person is **NOT an employee** under the FAML Act. Payments to them would not be subject to premiums and this person should NOT be counted within your total employee headcount (see C.R.S. 8-13.3-503(7)).

Individuals who meet the self-employed definition are not required to register or remit premiums or wage data. Self-employed individuals do not need to take any action to opt out if they do not wish to participate in FAML. For more details about family-leave options for self-employed workers, check out our explainer at famli.colorado.gov.



FAMLI and Business Structure

The structure of a business isn't what matters for FAMLI compliance. Businesses have identical obligations whether they are organized as S-corps, C-corps or any other structure with specific tax and liability requirements.

What matters is whether your business has qualifying employees. If you have at least one qualifying employee, you must register with the Division, submit wage data and send in premiums on behalf of that employee. See the section above, **EMPLOYER RESPONSIBILITIES**, to determine if you have any employees.



Counting Your Employees

20 Calendar Workweeks

Your total employee headcount will impact your premium liability, so it's important to know exactly how to count your employees. ***Having 10 total employees is the key threshold to keep in mind for FAMLI.*** Businesses with 10 or more total employees are responsible for sending 0.9% of wages to the Division every quarter. Businesses with 9 or fewer employees are responsible for 0.45% of wages. Businesses of either size can decide whether or not they deduct up to 0.45% from their employee's paychecks to contribute to that quarterly payment.



- Your employee headcount will be calculated ***once a year***. You'll report this to the Division upon initial registration and in the first quarter of every year thereafter.
- Your total number of employees equals the number of individuals employed during 20 or more calendar workweeks in the preceding calendar year regardless of how many hours and/or days they worked during each week.
- If an employer has ten or more employees who were employed during 20 or more weeks in all of 2022, the employer is required to pay the employer share of the premium for all four quarters of the year.
- If an employer has nine or fewer employees, the employer is not required to submit the 0.45% employer portion of the premium, but is ***still required to send in the 0.45% employee portion on behalf of its employees.***
- Employees on leave must be counted if they are expected to return to active employment including those on paid/unpaid leave, sick or medical leave, other leaves of absence, disciplinary suspension etc.
- Businesses need to count all nationwide employees within their organization to determine if they have ten or more employees, but will only be responsible for paying premiums for employees in Colorado.

The graphic below visualizes this 20-calendar-week concept in four examples.

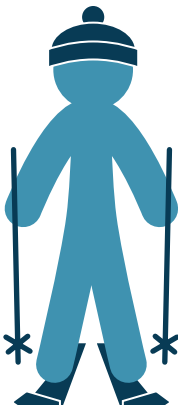
The first two employees are seasonal workers who both work during 20 or more weeks throughout the calendar year. Note that they both work intermittent schedules throughout the year and may only work one or two days during some work weeks, but they are still included in your headcount.

The third full time worker worked for more than 20 weeks, so would also be counted, even though you can see this worker left the company in August.

Moving to the final full time worker in pink. In this scenario, this worker was hired to replace the previous one. Since he only worked during 19 weeks of the year, this worker would not count toward your total headcount.

Seasonal Worker 1

22 weeks worked



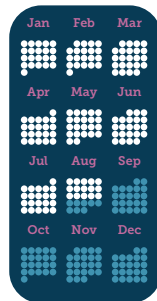
Seasonal Worker 2

20 weeks worked



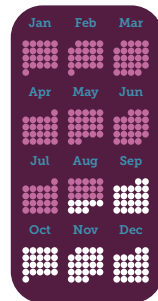
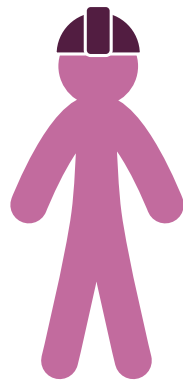
Full-Time Worker 1

33 weeks worked



Full-Time Worker 2

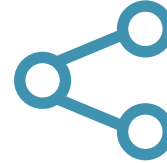
19 weeks worked



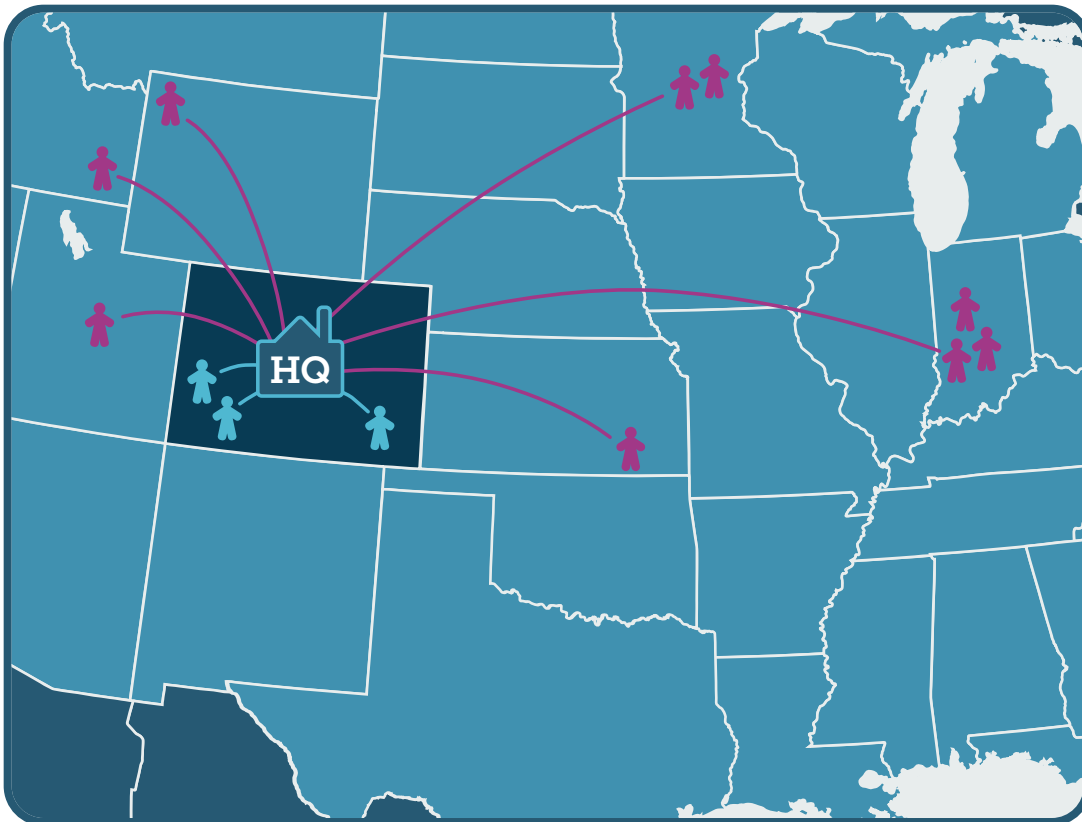
It's important to note that employers are responsible for deducting and remitting premiums for every employee as soon as they are hired. This 20-week concept should only be used to determine whether or not your business is categorized as having 10 or more employees.

Remote and Nationwide Workers

When it comes to counting remote employees, if the employer has 10 or more TOTAL employees-even if they work outside of Colorado-the employer will still be responsible for sending in the full 0.9% premium once a quarter.



In the example below, the employer would be responsible for both the 0.45% employee share and the 0.45% employer share for the three employees who work in Colorado because it has 12 total employees.



○ Total remote employees outside Colorado: 9

○ Total employees in Colorado: 3

○ Employer is required to pay and remit the full 0.9% premium for its 3 Colorado employees.

Colorado Localization

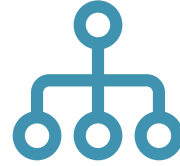
If you're struggling to determine whether or not an employee would be subject to FAMLI based on where they are located, here's what you need to know:

An employee will be subject to FAMLI if

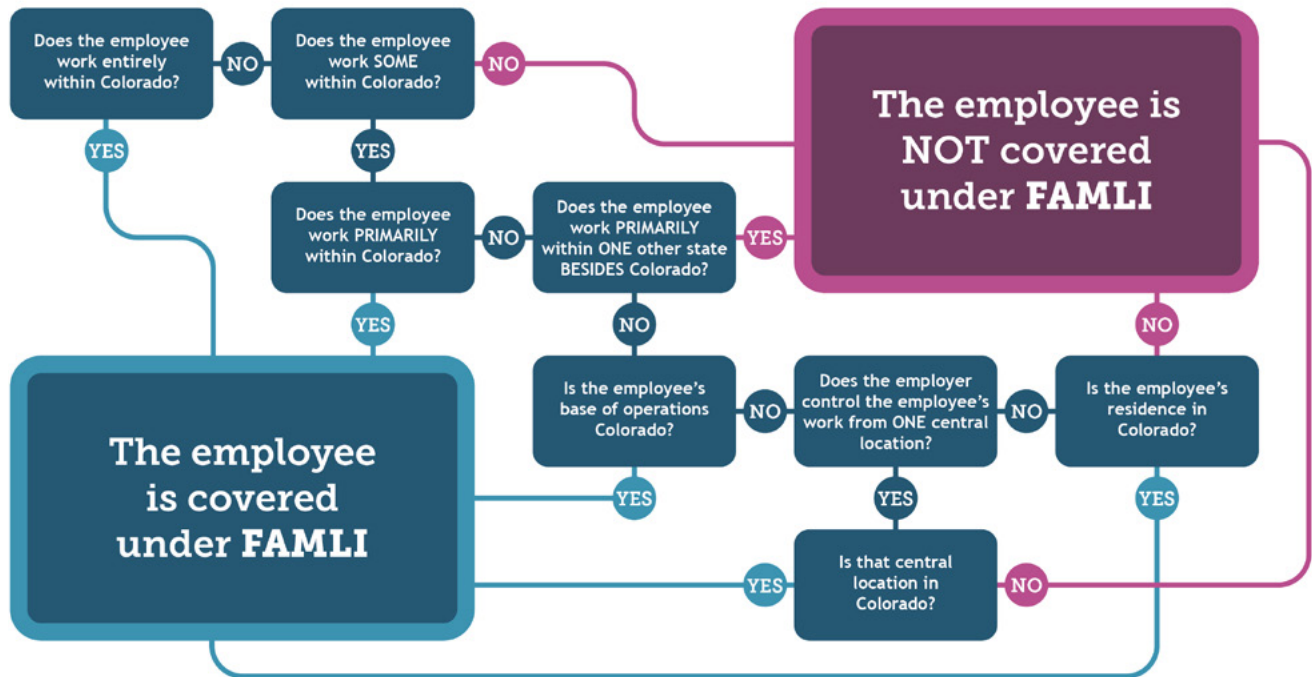
- The employee's work is performed entirely within Colorado;
- The employee performs work both within and outside of Colorado, but the work performed outside of Colorado is incidental to the employee's work within Colorado, or is temporary or transitory and consists of isolated transactions; or
- The employee's work is not primarily localized in any state, but some work is performed in Colorado, and one of the following is true:
 - The employee's base of operations is in Colorado, or if there is no base of operations, the place from which the employee's work is directed or controlled is in Colorado; or
 - Neither the base of operations nor the place from which some part of the work is directed or controlled is not in any state in which part of the employee's work is performed, but the employee's individual residence is in Colorado. More information regarding localization can be found in the FAMLI Division's [Premium Rules at 7 CCR 1107-1, Section 1.5.6.C.](#)



We know this is complicated, so we created the following decision tree to help you determine Colorado localization when it comes to employees being subject to FAMLI:



Is this employee covered under FAMLI?



FAMLI and Taxes



FAMLI premiums should be considered post-tax deductions that do not reduce an employee's taxable income.

Employers should report FAMLI deductions on IRS form W-2 in Box 14, and list "FAMLI" as the label.

The FAMLI Division does not regulate income tax reporting requirements, and we encourage employers to confer with counsel, their accountant, and/or the IRS to ensure compliance.

The FAMLI Division plans on issuing 1099s for benefit payments distributed to claimants similar to those distributed to claimants who have received unemployment benefits.



Small Business FAQs

Q *I'm a small employer with less than ten employees. Can I cover the premiums for some employees but not all?*

A Yes. All employers may collect from their employees a premium contribution of up to 0.45% of their wages. Whether an employer chooses to require less of a contribution from some or all employees is up to the employer.

Q *I'm a new company. Do I need to register with the FAMLI Division right away?*

A Yes. You should conduct employee count upon registration, and in Q1 of every year thereafter. Brand-new employers will often fall into the "9 or fewer" category upon initial registration, and some may remain in that size category when they do their count again in Q1. This may mean that new employers may see a premium "discount" in their first year and will only owe 0.45% of wages (rather than 0.9% for employers with 10 or more employees).

Q *Which employees are eligible for FAMLI leave?*

A Most Colorado employees become eligible to take paid leave after they have earned at least \$2,500 in wages within the State within the last 4 calendar quarters. Self-employed workers (Gig Workers, 1099 or Contract Workers) may also be eligible if they voluntarily opt into coverage and live and work in Colorado. Self-employed individuals will need to agree to pay premiums and submit wage data for three years when they opt in.

Q *What about FMLA? Can an employee take double leave?*

A Colorado's FAMLI program is designed to run concurrently with FMLA. The FAMLI Division does not manage or adjudicate FMLA claims. When a worker applies for FMLA, the Employer must tell them that they may be eligible for paid leave under the FAMLI Program. For questions related to FMLA, please visit the [U.S. Department of Labor website](#).





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